as payments of interest, then the period of limitation was three years from the 28th March, 1929, and accordingly that the suit was barred, not having been instituted until December 1933. In coming to this conclusion the learned Judge decided that the charge was "a simple bond, when a day is specified for payment" (Art. 48 of the Limitation Enactment). Mr. Ramani for the respondent, however, argued that Article 95, which gives a period of six years "for compensation for a breach of contract in writing," is a special article and not a residuary article and that accordingly where a contract is in writing, Article 95 applies whether or not there is another special article giving a shorter period of limitation. He relied on the principle established by the Privy Council decision of *Tricomdas* v. *Gopinath,* 44 I.A. 65, 70. But as pointed out by the learned trial Judge, the corresponding article under the Indian Act, Article 116, deals with "contracts in writing registered," and there is in the Indian Act no other special article dealing with registered contracts at all. The principle laid down by the Privy Council cannot therefore be applied in the Federated Malay States without modification. It was held by the majority of the Court in the case of the *Kwong Yik (Selangor) Banking Co. Ltd.* v. *Malayan Daily Express (1926) Ltd. and others,* [1933-34] F.M.S.L.R. 51, 57, 64; [1933] M.L.J. 198, that where a contract may or may not be in writing Article 95 should be applied when the contract is in writing, in preference to a special article which would *prima facie* cover such a contract whether in writing or not. But where, as in the case of a bill of exchange or a promissory note, the contract must necessarily be in writing, then I think Article 95 can only be applied if there is no special article dealing with the same subject matter. It is true that Article 95 is not in terms a residuary article, but it is a general article, and in the construction of statutes, if there is a special clause covering the exact point, it will prevail over a general clause which might also cover it — *generalis specialibus non derogant.* I think, however, that it must be shown that the special article indubitably applies, and if such article can only be applied by straining the language, then the special article should be rejected in favour of the general article.

In my opinion the agreement to pay in a charge is not a bond. It is certainly not a bond within the meaning of the definition in section 2 of the Enactment, and although the definition is not inclusive, I think that it indicates that the word 'bond' is used in its ordinary sense of an obligation to pay subject to a condition. As Garth C.J. points out in *Gisborne & Co.* v. *Subal Bowrie,* I.L.R. 8 Cal. 284, 286, a bond is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages. In the case of a simple money bond the plaintiff recovers the sum named in the bond, whereas in the case of the charge now before the Court the plaintiff is entitled to recover interest by way of damages for default in payment of the principal on the due date. Mr. Ramani has also pointed out that every mortgage deed in India expresses that the mortgagor 'binds himself' and such deeds are always referred to as mortgage bonds, and that accordingly the Indian decisions are not really in point. See *Gour,* Indian Transfer of Property Act, Vol. II, p. 896, paragraph 1429. As, therefore, it cannot be shown that a Federated Malay States charge clearly falls under any of the special articles, Article 95 should be applied and the period being six years, the plea of limitation fails for this reason also.

I would dismiss the appeal with costs. The deposit should be paid out to the respondent or his solicitor on account of his taxed costs.

Appeal dismissed.

PUBLIC TRUSTEE, FEDERATED MALAY STATES v. ANG KEH THO & ANOR.

[O.C.J. (Terrell Ag. C.J.) April 17, 1936]
[Selangor Civil Suit No. 160 of 1934]

Land Code (Cap. 138), s.111 — Liabilities of transferee of charged land.

The plaintiff was the registered chargee of a piece of land and the chargors were the first defendant and *T.* Subsequent to the charge *T.* transferred his beneficial interest in the land to the second defendant. The chargors having defaulted, the land was sold to recover the amount due on the charge and was bought in by the plaintiff. On sale there was a deficit for which the plaintiff, in this suit, sued both defendants. The second defendant pleaded that there was no cause of action against him.

[258] **Held:** that section 111 of the Land Code (Cap. 138) only makes the transferee of charged land liable to the chargee so long as the transferee remains the proprietor of such land, and therefore the second defendant was not liable because after the sale to recover the amount due on the charge he ceased to be the proprietor. [258]

Ramani for the plaintiff.
First defendant in person.
Hastings for the second defendant.

Cur. Adv. Vult.

Terrell Ag. C.J.: The plaintiff was the registered chargee of a piece of land held under Certificate of Title No. 4938, Kuala Lumpur. The chargors were the first defendant and one Tallalla. Subsequent to the charge the latter transferred his beneficial interest in the land to the second defendant. The chargors having made default, the land was put up for sale, and ultimately on the 25th November, 1933 was bought in by the plaintiff for $19,010. There was a deficit of $7,044.25 for which the plaintiff sued the two defendants. The plaint was filed on the 22nd May, 1934. The facts are not in dispute, and judgment has been obtained against the first defendant. The second defendant, however, alleges that the plaint discloses no cause of action against him.

In the case of a legal mortgage, there is no privity of contract between the mortgagee and the transferee of the equity of redemption; the transferee, however, who purchases subject to the mortgage debt is, in equity, apart from the express covenant, under an obligation to indemnify the original mortgagor whose liability under the personal covenant continues, see *per* Fletcher Moulton L.J. in *Mills* v. *United Counties Bank Ltd.,* [1912] 1 Ch. 231, 241, where he says that the obligation is based on good sense, and relates to every case where it can be reasonably implied that it was the intention of the parties that the indemnity

should be given. This passage was approved by the Privy Council in the *Montreal Trust Company* v. *The British Columbia Land and Investment Agency Ltd.*, [1936] M.L.J. 75, 78; *supra*, pp. 59, 62.

Prior to the passing of the Land Code in 1926 exactly the same principles were recognised in the case of registered land in the Federated Malay States; section 32 of the Registration of Titles Enactment, 1911, providing that the transferee of land subject to a charge is under an obligation to indemnify his transferor, the original chargor, but establishing no privity of contract between the transferee and the original chargee.

There is nothing illogical in this position. A person who lends money on the security of land relies, firstly, on the personal covenant of the borrower, and secondly, upon his remedies against the land itself. If the proprietor transfers the land subject to the charge, the security of the original chargee is not affected. There is no reason why he should expect to obtain as an additional security the covenant of the transferee who is introduced without his consent, and merely by virtue of an arrangement which is entirely a matter for the transferor and the transferee. The transferor, however, having received a reduced purchase price in consideration of his having transferred the land subject to the charge, is naturally entitled to be indemnified by the transferee against his liability to the original chargee.

Section 111 of the Land Code effected an important change, and as a result the transferee is made directly liable to the original chargee "so long as the transferee shall remain the proprietor" — in other words, privity of contract is established by statute between the transferee and the chargee in circumstances where no such privity had previously existed. When a person is put under a statutory liability from which he was previously free, it is an elementary canon of construction that such liability should not be extended beyond the express words of the statute (see *Maxwell's* Interpretation of Statutes, 7th edn., p. 71).

In the present case there can be no dispute that the second defendant ceased to be the 'proprietor' when the plaintiff bought the land at auction, and registered himself as the proprietor. Thereupon the obligation imposed in certain circumstances upon the second defendant, as transferee of land subject to a charge, ceased, as the statutory condition, under which alone such obligation was imposed, was no longer operative.

The suit is, therefore, misconceived and must be dismissed with costs.

Suit dismissed.

YEOH KOON BAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Pedlow J.) June 5, 1936]
[Selangor Magistrate's Criminal No. 27 of 1936]

Motor Vehicles Enactment (Cap. 168), s.44 — Whether applicable to motor vehicles licensed outside the Federated Malay States.

The words "or being licensed" in section 44(i) of the Motor Vehicles Enactment (Cap. 168) refer only to licences under the Enactment and issued in the Federated Malay States. They have no reference to licences issued outside the Federated Malay States.

Accordingly, the owner or driver of a lorry licensed in Johore cannot be convicted in the Federated Malay States for failing to comply with the terms and conditions of a Johore licence.

Tan Teow Bok for the appellant.

C. H. Whitton (Deputy Public Prosecutor) for the respondent.

[259] **Pedlow J.:** In the Court of the First Magistrate, Kuala Lumpur, the appellant had been charged, *inter alia*, as follows:— [259]

"That you on or about 27.2.36 at 5 a.m. at Cheras Road did fail to comply with the conditions of your motor lorry Johore licence No. 2258 by carrying excess load of 10½ cwts. Section 44(i) (Cap. 168), Motor Vehicles Enactment."

The appellant had pleaded guilty and had been fined $50 or one month's rigorous imprisonment, and had appealed against sentence only as provided by section 305, Criminal Procedure Code.

During the course of the hearing of the appeal the Court raised the point whether the Motor Vehicles Enactment or the rules made under it really created the offence charged and adjourned the appeal for argument of this point.

On resumption, after hearing the learned Deputy, the Court held that the conviction was illegal and for the following reasons:—

Section 13 of the Motor Vehicles Enactment — the Enactment under which the appellant had been convicted — states that a motor vehicle may, if it is registered or licensed under any law relating to motor vehicles in any State specified in the schedule, be used on the public thoroughfares of the Federated Malay States so long as such registraction (sic) remains in force, without being licensed under this Enactment. The Enactment does not make it very clear whether registration and licensing are one and the same process or two distinct processes but it does seem to imply, which I hold to be the case, that a vehicle cannot be registered without being licensed and *vice versa*. Now it was admitted that the appellant's lorry at the time of the alleged offence was licensed in Johore — a State specified in the schedule — being the holder of Johore licence No. 2258 and that that licence was still in force in that State. Therefore we start from this position that on the date in question the appellant's lorry was not licensed in the Federated Malay States and that it was no offence, in view of section 13, to use the lorry on the roads of the Federated Malay States.

The next point for consideration was whether it was an offence under the Enactment to use the lorry in the Federated Malay States otherwise than in conformity with its Johore licence, and that in turn depended on the proper construction of section 44, subsection (i) and in particular of the words "or being licensed." It was suggested that these words meant "or being licensed in the Federated Malay States, the Colony or in a State specified in the schedule," but I know of no canon of construction which would permit this view to be accepted. The Enactment is penal and must be strictly construed. When a licence is spoken of it must be construed, in the absence of